

8 October 1980

Special Investigations
CONDUCTING AIR FORCE COUNTERINTELLIGENCE ACTIVITIES
WITH THE FEDERAL BUREAU OF INVESTIGATION (FBI)

This regulation includes the 5 April 1979 agreement between the Department of Defense (DOD) and Attorney General of the United States which establishes jurisdiction and operational procedures that govern conducting counterintelligence activities by the military counterintelligence services in the United States. The agreement, attachment 1, implements Executive Order 12036, Section 1-1104, and supersedes the Delimitations Agreement of 1949, as amended. This regulation does not authorize the establishing of any system of records and is not affected by the Privacy Act of 1974 (5 U.S.C. 552a).

1. Authority for Conducting Counterintelligence Activities. Executive Order 12036, 24 January 1978, United States Intelligence Activities, Section 1-1104, gives the Secretary of Defense the authority to conduct counterintelligence activities outside the US with the Central Intelligence Agency, and inside the US with the FBI "pursuant to procedures agreed on by the Secretary of Defense and the Attorney General."

2. DOD-Attorney General Formal Agreement. A formal agreement, entitled "Agreement Governing the Conduct of Defense Department Counterintelligence Activities in Conjunction with the Federal Bureau of Investigation", has been established (see attachment 1). This agreement sets procedures for carrying out DOD counterintelligence activities within the United States.

3. Contents of the DOD-Attorney General Agreement:

a. The agreement:

(1) Tells how to coordinate military counterintelligence activities with the FBI.

(2) Identifies the DOD agencies authorized to conduct counterintelligence activities.

(3) Allocates responsibility for counterintelligence activities between the designated DOD agencies and the FBI.

b. Procedures that tell how to coordinate DOD counterintelligence operations with the FBI are in a classified annex to the agreement. This annex is not included in this regulation but is attached to the proper Air Force Office of Special Investigations (AFOSI) regulations.

4. Air Force Policy:

a. AFOSI is the only agency within the Department of the Air Force authorized to conduct counterintelligence activities and operations.

b. Conducting all Air Force counterintelligence investigations and operations within the United States is governed by relevant statutes, Executive Order 12036, this regulation, and the attached agreement. Also, when conducting counterintelligence operations, AFOSI must comply with the classified annex to the DOD-Attorney General agreement as implemented (see paragraph 3b).

c. Air Force personnel learning of any matters that fall within the definition of "counterintelligence investigation" (see attachment 1, section 4B) must refer this information either to their commander or directly to the nearest AFOSI representative at once (see AFR 205-57).

BY ORDER OF THE SECRETARY OF THE AIR FORCE

OFFICIAL

VAN. L. CRAWFORD, JR., Colonel, USAF
Director of Administration

LEW ALLEN, JR., General, USAF
Chief of Staff

1 Atch
DOD-Attorney General Agreement

SUMMARY OF CHANGES

This revision explains the purpose and policies of the DOD-Attorney General Agreement, 5 Apr 79, which supersedes the Delimitations Agreement of 1949. It implements EO 12036, Section 1-1104 and sets general Air Force policies that regard conducting counterintelligence activities and operations within the US.

Supersedes AFR 124-11, 20 October 1970.

No. of Printed Pages: 4

OPR: HQ AFOSI/XPM (Capt Fredrick N. Voigtman)

Approved by: HQ AFOSI/XP (Maj William G. Goforth)

Writer-Editor: M.M. Green

Distribution: F

DOD—ATTORNEY GENERAL AGREEMENT

AGREEMENT GOVERNING THE CONDUCT OF DEFENSE DEPARTMENT COUNTERINTELLIGENCE ACTIVITIES IN CONJUNCTION WITH THE FEDERAL BUREAU OF INVESTIGATION

SECTION 1

PURPOSE:

The purpose of this memorandum is to establish jurisdictional boundaries and operational procedures to govern the conduct of counterintelligence activities by the military counterintelligence services of the Department of Defense in conjunction with the Federal Bureau of Investigation. It implements Section 1-1104 of Executive Order 12036, requiring procedures to govern the coordination of military counterintelligence activities within the United States; and supersedes the Delimitations Agreement of 1949, as amended.

SECTION 2

DEFENSE COMPONENTS AUTHORIZED TO CONDUCT COUNTERINTELLIGENCE ACTIVITIES

Within the Department of Defense, each of the military departments is authorized by Executive Order 12036 to conduct counterintelligence activities within the United States in coordination with the FBI and abroad in coordination with the Central Intelligence Agency. Within the military departments, the United States Army Intelligence and Security Command, the Naval Investigative Service, and the Air Force Office of Special Investigations, are authorized by departmental regulation to conduct such activities. The term "military counterintelligence service" or "military CI service", as used herein, refers to these components.

SECTION 3

FEDERAL BUREAU OF INVESTIGATION COORDINATION WITH THE DEPARTMENT OF DEFENSE

A. Policy matters affecting Defense counterintelligence components will be coordinated with the Office of the Under Secretary of Defense for Policy.

B. When a counterintelligence activity of the Federal Bureau of Investigation involves military or civilian personnel of the Department of Defense, the Federal Bureau of Investigation shall coordinate with the Department of Defense. (Section 1-1401 of Executive Order 12036). For military and civilian personnel of a military department, the military CI Service has coordination authority for the Department of Defense. For other civilian personnel of the Department of Defense, coordination shall be effected with the Office of the Under Secretary of Defense for Policy.

C. It is contemplated that representatives of field elements of the FBI and military counterintelligence services will maintain close personal liaison, and will meet frequently and routinely for the purpose of ensuring close cooperation in carrying out their counterintelligence activities.

SECTION 4

DEFINITIONS

For the purpose of this memorandum, the following definitions shall apply:

A. The term "coordination" means the process of eliciting objections and comments prior to undertaking a proposed action. As used here, the term implies that no such action will be taken so long as the party with whom the action in question is raised continues to have objections which cannot be resolved.

B. The term "counterintelligence investigation" is included in the term "counterintelligence", as defined in Section 4-202 of Executive Order 12036, and refers to the systematic collection of information regarding a person or group which is, or may be, engaged in espionage or other clandestine intelligence activity, sabotage, international terrorist activities, or assassinations, conducted for, or on behalf of, foreign powers, organizations, or persons.

C. The term "counterintelligence operations" is included in the term "counterintelligence", as defined in Section 4-202 of Executive Order 12036, and refers to actions taken against hostile intelligence services to counter espionage and other clandestine intelligence activities damaging to the national security.

D. The term "DOD civilian personnel" includes all U.S. citizen officers and employees of the Department of Defense not on active military duty and all foreign nationals employed by the Department of Defense.

E. The term "security service" refers to that entity or component of a foreign government charged with responsibility for counterespionage or internal security functions of such government.

F. The term "United States" includes the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, and all territories, possessions, or protectorates under U.S. sovereignty or control; but does not include occupied territory governed under the President's authority as Commander-in-Chief.

SECTION 5

POLICY

A. The responsibilities of each military counterintelligence service and the Federal Bureau of Investigation for the conduct of counterintelligence investigations and operations shall be governed by relevant statutes, Executive Order 12036, and this agreement.

B. Each military department is responsible for protecting its personnel and installations from physical threats and for ensuring that its programs and activities which involve the national security are not compromised to hostile intelligence agencies.

C. Within the United States, the Federal Bureau of Investigation conducts counterintelligence and coordinates the counterintelligence activities of other agencies.

D. Under combat conditions or other circumstances wherein a military commander is assigned responsibility by the President for U.S. Government operations in a particular geographic area, he shall have the authority to coordinate all counterintelligence activities within such area, notwithstanding the provisions of this memorandum, subject to such direction as he may receive from the Secretary of Defense.

E. The military CI Services and the Federal Bureau of Investigation are mutually responsible to ensure that there is a continuing and complete exchange of all counterintelligence information and operational data relevant to the particular concerns of each operating agency.

F. Policy issues arising in the course of counterintelligence activities which cannot be resolved at the FBI/military CI Service local or headquarters level, shall be jointly referred to the Attorney General and the Secretary of Defense for resolution, or referred to the Special Coordination Committee (Counterintelligence) of the National Security Council in accordance with SCC guidelines.

SECTION 6

DELINEATION OF RESPONSIBILITY FOR COUNTERINTELLIGENCE INVESTIGATIONS

Responsibility for counterintelligence investigations shall be apportioned between the Federal Bureau of Investigation (FBI) and the military counterintelligence services of the Department of Defense (DOD) as follows:

A. All investigations of violations of the Atomic Energy Act of 1946, which might constitute a counterintelligence investigation as defined herein, shall be the responsibility of the FBI, regardless of the status or location of the subjects of such investigations.

B. Except as provided by paragraph C(2) herein, all counterintelligence investigations of foreign nationals undertaken within the United States shall be the responsibility of the FBI.

C. Counterintelligence investigations within the United States shall be conducted in accordance with the following jurisdictional guidelines:

1. Except as provided herein, investigations of all civilians, including DOD civilian personnel, shall be the responsibility of the FBI;

2. Investigations of U.S. military personnel on active duty shall be the responsibility of the counterintelligence service of the appropriate military department;

3. Investigations of retired military personnel, active and inactive reservists, and National Guard members shall be the responsibility of the FBI; provided, however, that investigations of actions which took place while the subject of the investigation was, or is, on active military duty shall be conducted by the counterintelligence service of the appropriate military department; and,

4. Investigations of private contractors of the Department of Defense, and their employees, shall be the responsibility of the FBI.

Provided, however, that nothing contained in this paragraph shall prevent the military counterintelligence services of the Department of Defense, in a manner consistent with applicable law and Executive Branch policy, from undertaking:

(a) In those cases where the FBI chooses to waive investigative jurisdiction, investigative actions which are necessary to establish or refute the factual basis required for an authorized administrative action, to protect the security of its personnel, information, activities, and installations; or

(b) To provide assistance to the FBI in support of any counterintelligence investigation for which the FBI is herein assigned responsibility.

D. Counterintelligence investigations outside the United States shall be conducted in accordance with the following guidelines:

1. Investigations of military personnel on active duty shall be the responsibility of the military counterintelligence services of the Department of Defense.

2. Investigations of current civilian employees, their dependents, and the civilian dependents of active duty military personnel shall be the responsibility of the military counterintelligence services, unless such responsibility is otherwise assigned pursuant to agreement with the host government, U.S. law, or Executive directive.

3. Investigations of retired military personnel, active and inactive reservists, National Guard members, private contractors and their employees, and other U.S. persons, who permanently reside in such locations, shall be undertaken in consultation with the FBI, CIA, and host government as appropriate.

Provided, however, that nothing contained in this paragraph shall prevent the military counterintelligence services of the Department of Defense, in a manner consistent with applicable law and Executive Branch policy from undertaking:

(a) Investigative actions which are necessary to establish or refute the factual basis required for an authorized administrative action, to protect the security of its personnel, information, activities, and installations; or

(b) To provide assistance to the FBI or security service of a host government in support of counterintelligence investigations outside the United States for which DOD is not herein assigned investigative responsibility.

SECTION 7

COORDINATION OF COUNTERINTELLIGENCE OPERATIONS

(The procedures governing the coordination of counterintelligence operations within the United States by the military counterintelligence services with the FBI are contained in the classified annex to the memorandum.)

SECTION 8

IMPLEMENTATION

A. The policy and procedures set forth herein shall be implemented in the regulations of the affected agencies.

B. The provisions of this memorandum, and the classified annex made a part hereof, shall be effective immediately upon execution by the Attorney General and Secretary of Defense.

William R. Baze
ATTORNEY GENERAL OF THE UNITED STATES

Date: 4/5/79

William R. Baze
"ACTING"
SECRETARY OF DEFENSE

Date: FEB 9 1979